

STATE MEMBERS
THE FEDERAL-STATE JOINT BOARD ON SEPARATIONS EX PARTE OR LATE FILED
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June 17, 1999

Chairman Kennard
Chair, Federal State Joint Board On Separations
Commissioner Ness
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Commissioner Powell
Member, Federal State Joint Board on Separations
445 12th St., S.W.
Washington, D.C. 20554

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JUN 17 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: EX PARTE – TWO ORIGINALS FILED IN THE PROCEEDING CAPTIONED:

***In the Matter of Jurisdictional Separations Reform and Referral to the
Federal-State Joint Board - CC Docket No. 80-286***

Request for an En Banc Meeting of the Full Separations Joint Board.

Dear Colleagues

We are writing to each of you because several recent developments have major implications for the separations process. These developments, as well as some provisions of the Telecommunications Act of 1996, raise issues of fundamental importance to the separations process and to the historic balance of responsibilities between Federal and State regulators. These issues require expedited resolution to ensure the reasonableness of the jurisdictional allocation process.

Because of the importance of the issues now before us, we think there is a need for more direct collaboration and regular working contact between State and Federal members of the Joint Board. Of immediate concern are recent developments relating to the Internet. The Commission has issued two separate decisions on this topic that relied upon and significantly extended the logic and effect of the Bell South Memory Call case,¹ a case that has been largely dormant from a separations perspective. First, the GTE DSL tariff decision raised questions about allocating the costs of intrastate facilities used to provide interstate DSL services. The more recent decision involved reciprocal compensation and other matters. It mandated a new principle that some jurisdictionally interstate services may be provided and sold under intrastate tariffs.

¹ *In the Matter of Petition for Emergency Relief and Declaratory Ruling Filed by BellSouth Corporation*, 7 FCC Red 1619-21 (1992)

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This is a fundamental change to traditional federal-state authority, and it has many implications concerning responsibility over cost recovery and rate design. In addition, we have substantive concerns associated with the recent letter to SBC. Aside from the substantive aspects of the letter, we also are concerned about the letter's applicability to other carriers and the method by which it was issued.

Other Internet-related developments that should be discussed include anecdotal evidence of increases in local usage minutes, the effect of that increase on separations factors, and the ensuing cost shift to the intrastate jurisdiction. Recent network congestion problems in some areas also have made us aware that some network facilities considered to be non-traffic-sensitive (NTS) may be actually traffic sensitive (TS). This suggests that some equipment currently categorized as NTS should be reclassified as TS and be allocated based on usage.

Direct collaboration is also needed on the fundamental separations and jurisdictional issues we raised last winter in our report. We identified numerous problems, including that (a) technology has made traditional allocations more arbitrary, (b) usage is now more difficult to track, (c) end user charges have undermined the rate design underpinnings of separations, and (d) separations aspects of §254(k) of the Telecommunications Act still have to be addressed by this Board. The report concluded that the focus of further Joint Board activity should be to explore how best to achieve the overall goals of separations with a new, more rational, structure.

Several issues are ripe for decision by this Joint Board now that the comment cycle on our report (as well as on issues raised and tentative conclusions proposed by the Commission in its separations NPRM) has concluded. We think it would be useful to seek a Joint Board consensus on a work plan to address the issues listed below. We recognize that the federal commissioners may have other issues they would like added to the list. But, in any event, we believe that it is now time to begin our work on numerous issues including:

- the appropriate separations treatment of facilities used to provide UNEs in the wake of the Supreme Court decision;
 - the separations changes required in light of the Commission's decision that it has jurisdiction over Internet communications and other Internet-related developments;
 - the implementation of a three-year rolling averaging of separations usage factors or a freeze of factors;
 - whether changes are needed as to the manner in which separations interpretations are issued;
 - whether a new, more rational, structure should be designed, possibly including a realignment of jurisdictional responsibility;
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- whether increasing competition for some of the lines of business of local exchange carriers:
 - requires updating of the existing relationships among Part 64, Part 36 and State decisions about competitive "below the line" services; and
 - allows significant simplification of existing accounting and separations structures;
- whether the second sentence of section 254(k) of the Act imposes new duties on the Commission and the States, and if so, whether any fundamental change is needed to existing accounting and separations requirements; and finally
- whether potential "takings" or "confiscation" liabilities at either the State or federal level impose constraints on the appropriate level of separations requirements.

This list of issues does not include numerous other items that have been referred to this Joint Board.

With all of these issues presently pending, it is essential that the State and federal members of the Joint Board maintain frequent, clear and meaningful communications. *With this purpose in mind, we request a public en banc meeting be scheduled for the fall, perhaps September.* We envision this meeting to be primarily a working meeting to put our efforts on track - with all commissioners, State and federal, freely expressing their views on the fundamental questions. We expect to prioritize the issues and develop a work plan that will address the issues in a feasible time frame. We also envision significant advance staff work, and we would hope that some action items on short-term issues can be prepared and decided as well.

We look forward to receiving information about your availability for a meeting. Please have your staff contact Sam Loudenslager, our staff chair, at the Arkansas Public Service Commission, 1000 Center Building, Little Rock, Arkansas 72201, for scheduling.

Sincerely,

State Members, Federal State Joint Board on Separations

The Honorable David Rolka, COMMISSIONER PENNSYLVANIA PUBLIC UTILITY COMMISSION
The Honorable Joan Smith, COMMISSIONER, OREGON PUBLIC UTILITY COMMISSION
The Honorable Thomas Welch, CHAIRMAN, MAINE PUBLIC UTILITIES COMMISSION
The Honorable Jim Posey, COMMISSIONER, ALASKA PUBLIC UTILITIES COMMISSION

By:  Acting Counsel For State Members.